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1. Appeal Brief
2. Fee Authorization

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Adil Musabji
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PATENT
Case No. N0189US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Uhlir et al.

Serial No.: 10/825,574

Filed: 04/15/2004

For: Method for Comparing Performances on Remotely Located Courses

Customer No.: 37583

Group: 3715

Examiner:
Kang Hu

Fee Authorization

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Commissioner is hereby authorized to charge the following fee and credit any overpayments to Deposit Account No. 50-0728.

Fee Code: 1402 Filing Appeal Brief $540.00

Respectfully submitted,

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Case No. N0189US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	)	
	)	
Kurt Brooks Uhlir, et al.	)	
	)	Examiner Kang Hu
Serial No. 10/825,574	)	
	)	Group Art Unit No. 3715
Filing Date: April 15, 2004	)	
	)	
For: METHOD FOR COMPARING PERFORMANCES ON REMOTELY LOCATED COURSES	)	

APPEAL BRIEF (37 CFR § 41.37)

Mail Stop: Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is submitted in accordance with 37 CFR § 41.37 and is filed in furtherance of the Notice of Appeal filed October 14, 2008.

I. Real Party in Interest

The real party in interest is NAVTEQ North America, LLC (formerly Navigation Technologies Corporation), a wholly-owned, indirect subsidiary of Nokia Corporation, a publicly-traded corporation that has its headquarters in Finland.

II. Related Appeals and Interferences

There have not been and are no pending appeals, interferences, or judicial proceedings that may be related to, directly effect, or be directly affected by or have bearing on the Board's decision in this appeal.

III. Status of Claims

1. Claims 2-8, 11-14, 17-19, 23, and 36-38 are present and pending in the application. Claims 1, 9-10, 15-16, 20-22, and 24-35 have been previously canceled.

2. Claims 2-8, 11-14, 17-19, 23, and 36-38 have been finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Fry (U.S. 6,463,385) in view of Khosla (U.S. 6,080,063) and further in view of the Examiner's official notice.

3. The rejections of claims 2-8, 11-14, 17-19, 23, and 36-38 are being appealed.

IV. Status of Amendments

No amendments were filed subsequent to the final rejection mailed May 14, 2008.

V. Summary of Claimed Subject Matter

There are three (3) independent claims involved in this appeal: Claims 36-38. In addition, there are fifteen (15) dependent claims involved in this appeal: Claims 2-8, 11-14, 17-19, and 23.

Independent claim 36 relates to a method for facilitating a first performance by a participant in an event that includes movement along a first course located in a first geographic

area (*e.g.*, Figure 1 (reference 8) and Figure 2 (reference 50); page 6, line 9 – page 9, line 14). The method includes using a geographic database that contains data that represents geographic features in the first geographic area to compare the geographic features of the first course to the geographic features of a second course located in a second geographic area different from the first geographic area (*e.g.*, Figure 1 (references 30, 54, 56) and Figure 2 (reference 58); page 3, lines 18-26; page 4, line 23 – page 5, line 17; page 6, line 26 – page 7, line 11). Another step of the method is comparing the first performance to a second performance, wherein the second performance is along the second course (*e.g.*, Figure 1 (references 28, 54, 56) and Figure 2 (reference 64); page 7, lines 18-27; page 8, lines 5-8). The method also includes providing an indication of the comparing of the first and second performances to the participant (*e.g.*, Figure 1 (references 16 and 18) and Figure 2 (reference 66); page 8, lines 1-17).

Independent claim 37 relates to a system for facilitating performances in events (*e.g.*, Figure 1 (reference 8); page 3, line 17 – page 6, line 6). The system comprises a geographic database that contains data that represents geographic features in a first geographic area and a second geographic area different from the first geographic area (*e.g.*, Figure 1 (references 30, 10, 12); page 3, lines 18-26; page 5, lines 1-17). The system also includes a competition comparison and equivalency program executed on a computer system that uses the geographic database to compare the geographic features of a first course located in the first geographic area to the geographic features of a second course located in the second geographic area (*e.g.*, Figure 1 (references 28, 54, 56); page 4, lines 23-29; page 7, lines 18-27; page 8, lines 5-8) and indicates to a participant results of a comparison of a first performance by the participant in an event that includes movement along the first course to a second performance along the second course (*e.g.*, Figure 1 (references 16 and 18); page 8, lines 1-17).

Independent claim 38 relates to a computer-readable medium having executable instructions stored thereon for performing a method for facilitating performances in events (*e.g.*, Figure 1 (reference 8) and Figure 2 (reference 50); page 6, line 9 – page 9, line 14). The method includes using a geographic database that contains data that represents geographic features in the first geographic area to compare the geographic features of the first course with the geographic features of a second course located in a second geographic area different from the first geographic area (*e.g.*, Figure 1 (references 30, 54, 56) and Figure 2 (reference 58); page 3, lines 18-26; page 4, line 23 – page 5, line 17; page 6, line 26 – page 7, line 11). The method also includes comparing the first performance to a second performance, wherein the second performance is along the second course (*e.g.*, Figure 1 (references 28, 54, 56) and Figure 2 (reference 64); page 7, lines 18-27; page 8, lines 5-8). Another step in the method includes providing an indication of the comparing of the first and second performances to the participant (*e.g.*, Figure 1 (references 16 and 18) and Figure 2 (reference 66); page 8, lines 1-17).

VI. Grounds of Rejection to be Reviewed on Appeal

1. At issue is whether Appellants' claims 2-8, 11-14, 17-19, 23, and 36-38 are obvious and unpatentable under 35 U.S.C. § 103(a) in view of Fry (U.S. 6,463,385) and Khosla (U.S. 6,080,063) and further in view of the Examiner's official notice.

VII. Argument

1. The Examiner Erred in Rejecting claims 2-8, 11-14, 17-19, 23, and 36-38 as being obvious in view of Fry, Khosla, and official notice.

Reversal of the Examiner's rejection of claims 2-8, 11-14, 17-19, 23, and 36-38 is respectfully requested for the reasons set forth below.

"The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." MPEP § 2142. The Examiner has not provided adequate factual findings or rationale to support clear articulated reason(s) to reject the claims under the legal standard of obviousness.

(a) Rejection of Independent Claims 36 and 38 and Dependent Claims 2, 5-8, 11-14, and 17-19

Independent claims 36 and 38 recite, *inter alia*, "using a geographic database that contains data that represents geographic features in the first geographic area to compare the geographic features of the first course to the geographic features of a second course located in a second geographic area different from the first geographic area," "comparing the first performance to a second performance, wherein the second performance is along the second course," and "providing an indication of the comparing of the first and second performances to the participant." The cited references and official notice do not teach or suggest at least these features and do not render the claims as obvious.

On page 2 of the Final Office Action dated May 14, 2008, Examiner Hu asserted that Fry teaches using a geographic database that contains data that represents geographic features in a first geographic area to compare the geographic features of a first course to the geographic features of a second course located in a second geographic area different from the first geographic area.

Fry discloses a sports-related measurement system having an integral global satellite positioning ("GPS") receiver and computer interfacing capability. (Fry, column 2, lines 45-48). For example, the system may be used on a bicycle in which a cyclist may be provided with elevation as well as geographic location information, which may be particularly useful in determining performance, endurance, and other characteristics. (Fry, column 2, lines 17-28). Also, the performance of one or more individuals engaged in a sports activity may be forwarded to a centralized location, such as a website, allowing each person to see how they did relative to each other. Real-time monitoring may be used to allow individuals to rate their own performances while engaged in an activity of a particular course, for example, or compete with others, either at the same or a different time. (Fry, column 7, lines 35-39 and lines 54-59).

However, there is no teaching or suggestion of using a geographic database that contains data that represents geographic features in a first geographic area to compare the geographic features of the first course to the geographic features of a second course located in a second geographic area different from the first geographic area.

On page 3 of the Final Office Action dated May 14, 2008, Examiner Hu asserted that Fry does not explicitly disclose using a geographic database but that such a geographical database is well-known in comparing data. Even if the general use of a geographic database is known, it is not well-known or obvious to use a geographic database to compare features of a first course in a first geographic area to features of a second separate course in a different geographic area. There is no teaching, suggestion, or rationale to use a geographic database for such comparisons.

Furthermore, Fry discloses that map data may also be stored enabling data collected by the bicycle or sports device to be viewed relative to the map information in superposition. (Fry, column 3, lines 9-13). The inclusion of maps for superposition of the ride and characteristics

provides for a more exciting and user-friendly interface. (Fry, column 7, lines 6-8). However, using the map data for superposition in Fry is not the same as using a geographic database to compare geographic features of two separate courses at different locations. Fry discloses superpositioning map data with collected data for one given course, not comparing map or geographic features between two courses at different locations.

On page 3 of the Final Office Action dated May 14, 2008 and in the Advisory Action dated September 23, 2008, Examiner Hu asserted that Fry teaches comparing a first performance to a second performance, wherein the second performance is along the second course and the first performance is along the first course located in a geographic area different than the second course.

Fry discloses monitoring performance characteristics between individuals on one particular course in which the individuals can rate their own performances (Fry, column 7, lines 35-39 and 54-59), not comparing performances occurring on two separate courses. There is no mention or suggestion of comparing a performance on one course with a performance on another course in a different geographic location.

In the Advisory Action dated September 23, 2008, Examiner Hu pointed to Fry, column 1, lines 55-60 that mention the U.S patent 5,335,188 ("Brisson"), which discloses a device for monitoring and comparing present, past, and ideal performance on an exercise machine such as a bicycle. The system stores a set of performance data in memory, which can then be compared against a stored, user selected performance data.

However, Brisson does not suggest or teach comparing performance data on a first course to performance data on a second course that is located in a different geographic area than the first

course. Brisson discloses comparing performance data regarding performances on the same course or training course. (Brisson, column 2, lines 40-64 and column 5, lines 6-30). For example, if the cycle computer in Brisson is showing an elapsed time for a current ride, it also shows the amount of time that was required to reach the same point along the course (Brisson, column 5, lines 26-30), and the performance of one athlete may be recorded as a standard to be used by other athletes who wish to emulate the performance of the first athlete along the same training course. (Brisson, column 2, lines 61-64).

Within the Background section of Fry, column 2, lines 5-10 further describes the Brisson patent by stating that if a user rides on many different routes, the cycle computer may not have enough memory to save all ride data, in which case the connector (65) may be used to transfer a larger number of pace files to an external computer such as a PC.

Again, there is no suggestion or teaching of comparing performance data on a first course to performance data on a second course that is located in a different geographic area than the first course. Even though multiple performance data on different routes are stored, there is no teaching or suggestion of comparing performance data along different geographically located courses with each other. According to the cited references, performance data along a course will be compared to other performance data along the same course.

In the Advisory Action dated September 23, 2008, Examiner Hu further asserted that no two races are the same because athletes can pick different points of travel along a course, such as one athlete using an apex or outside point to pass someone, and because physiological and weather conditions may not be exactly the same.

However, even if one entertains Examiner Hu's assertions, such assertions still do not factually teach or suggest or render obvious comparing performance data on a first course to

performance data on a second course that is located in a different geographic area than the first course. For example, even though athletes may race along different points along the same course, performance data of the athletes (according to the cited references) are still compared in regards to the same course, not separate courses located in different geographic areas. If one athlete competes a little to the right and another athlete competes a little to the left, both athletes are still running on the same course. Furthermore, differences in physiological conditions and weather conditions do not change the fact that different performance data are still compared in reference to one same course. Physiological conditions and weather conditions do not change the geographical location of a course.

On page 3 of the Final Office Action dated May 14, 2008, Examiner Hu asserted that Fry does not explicitly teach providing an indication of the comparison but points to Khosla.

Khosla discloses a game play system that allows remote players to participate in a concurrent simulation of a live event as the live event is occurring. (Khosla, Abstract; column 6, lines 13-33 and lines 49-67). A display includes entities corresponding to real participants in the live event as well as entities corresponding to simulated participants in the live event. (Khosla, column 2, lines 35-38). The system of Khosla combines the excitement of a highly interactive video game with the drama and publicity surrounding a live event, such as a car race, in which remote participants can effectively "compete" with real participants in the live event. (Khosla, column 2, lines 48-52).

However, even if one of ordinary skill in the art would have combined the teachings of the references, the combination does not teach or suggest or render obvious providing an indication of the comparing between a first performance on the first course and a second

performance on the second course that is in a different geographic area than the first course. Virtually competing with representations of real entities in a single event, such as a car race, is associated with one course, not two separate courses at different locations. It would not have been obvious to provide an indication of a comparison between different performances on separate courses located in different geographical locations.

Claims 36 and 38 would not have been obvious in view of the cited references and official notice. Accordingly, reversal of the rejections of claims 36 and 38 is respectfully requested.

Claims 2, 5-8, 11-14, and 17-19 depend, directly or indirectly, from claim 36. The arguments regarding claim 36 appropriately apply to the dependent claims as well. Accordingly, reversal of the rejections of claims 2, 5-8, 11-14, and 17-19 is respectfully requested.

(b) Rejection of Independent Claim 37 and Dependent Claim 23

Independent claim 37 recites, *inter alia*, "a competition comparison and equivalency program executed on a computer system that uses the geographic database to compare the geographic features of a first course located in the first geographic area to the geographic features of a second course located in the second geographic area and indicates to a participant results of a comparison of a first performance by the participant in an event that includes movement along the first course to a second performance along the second course." The cited references and official notice do not teach or suggest at least these features and do not render the claim as obvious.

The arguments regarding claims 36 and 38 appropriately apply to claim 37 as well. Specifically, the cited references and Examiner Hu's official notice do not provide or support

rationale to render obvious a competition comparison and equivalency program that uses a geographic database to compare the geographic features of a first course located in a first geographic area to the geographic features of a second course located in a second different geographic area.

Fry discloses monitoring performance characteristics between individuals on one particular course and superpositioning map data with collected data for the one given course, not comparing map or geographic features between separate courses at different locations.

Also there is no suggestion or support for a competition comparison and equivalency program that indicates to a participant results of a comparison of a first performance by the participant in an event that includes movement along the first course to a second performance along the second course in a different geographic area.

Fry does not mention or suggest a comparison of a performance on one course with a performance on another course in a different geographic location. Also, there is no teaching or suggestion of indicating such a comparison. The virtual competing with real entities disclosed in Khosla concerns one course, not at least two separate courses at different locations.

Claim 37 would not have been obvious in view of the cited references and official notice. Accordingly, reversal of the rejection of claim 37 is respectfully requested.

Claim 23 depends from claim 37. The arguments regarding claim 37 appropriately apply to dependent claim 23 as well. Accordingly, reversal of the rejection of claim 23 is respectfully requested.

(c) Rejection of Dependent Claim 3

Claim 3 depends from claim 36. The arguments regarding claim 36 appropriately apply to claim 3 as well.

Furthermore, claim 3 recites, *inter alia*, "selecting the second course to be equivalent to the first course by applying a factor selected from a group consisting of: distance, elevation changes, temperature, humidity, wind, surface, turns, average time per distance, average volume oxygen expelled per unit distance, average heart-rate per unit distance, time to complete a particular segment, and calories expended." The cited references and the official notice do not teach or suggest at least these features and do not render the claim as obvious.

Fry discloses superpositioning map data with collected data for one given course and monitoring performance characteristics between individuals on one particular course in which the individuals can rate their own performances. However, there is no mention or suggestion of selecting a second course to be equivalent to a first course that is in a different geographic area, let alone selecting the second course by applying at least one of the factors recited in claim 3. Fry discloses using sensors to determine weather conditions (Fry, column 4, lines 37-61) and using GPS receiver electronics to collect geographical information (Fry, column 5, lines 19-23) for monitoring a sports activity, such as a bicycle ride, on a particular course. Also, Fry discloses measurement capabilities of physiologic parameters, such as heart rate, blood pressure, and watts of energy expended (Fry, column 8, lines 23-40), for monitoring a bicycle rider on a particular course. However, there is no mention of using factors such as elevation changes, temperature, turns, etc. to select a second course to be equivalent to a first course in a different geographic area.

Accordingly, reversal of the rejection of claim 3 is respectfully requested.

(d) Rejection of Dependent Claim 4

Claim 4 depends from claim 36. The arguments regarding claim 36 appropriately apply to claim 4 as well.

Furthermore, claim 4 recites, *inter alia*, "selecting the second course to be equivalent to the first course by applying a personal factor selected from a group consisting of: age, gender, and physical handicaps." The cited references and the official notice do not teach or suggest at least these features and do not render the claim as obvious.

On page 6 of the Office Action dated October 17, 2007, Examiner Hu asserted that Fry does not explicitly disclose the selecting of a second course to be equivalent to the first course by applying a factor of age, gender, and physical handicaps but that it would have been obvious to try because these factors are commonly known in sports. Appellants' respectfully disagree with Examiner Hu. Firstly, Fry does not even hint at or suggest selecting a second course to be equivalent to a first course that is in a different geographic area. Secondly, just because age, gender, and physical handicaps may be known in sports, that does not mean it would have been obvious for one of ordinary skill in the art to keep these factors in mind or use these factors in selecting a second course to be equivalent to a first course that is in a different geographic area. There is no evidence or rationale to support such assertions.

Accordingly, reversal of the rejection of claim 4 is respectfully requested.

Conclusion

Appellants respectfully submit that the rejections of claims 2-8, 11-14, 17-19, 23, and 36-38 raised by the Examiner were in error for at least the reasons set forth above. Accordingly, reversal of all grounds of rejection is respectfully requested.

Respectfully submitted,

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VIII. Claims Appendix

2. The method of Claim 36 wherein the event is one selected from a group consisting of: running, bicycling, a road rally, a triathlon, a soap box derby, a dog sled race, cross-country skiing, sledding, a roller blade race, race walking, rowing, a steeplechase street luge, adventure racing, snow boarding, rock climbing, and extreme runs.

3. The method of Claim 36 further comprising:

selecting the second course to be equivalent to the first course by applying a factor selected from a group consisting of: distance, elevation changes, temperature, humidity, wind, surface, turns, average time per distance, average volume oxygen expelled per unit distance, average heart-rate per unit distance, time to complete a particular segment, and calories expended.

4. The method of Claim 36 further comprising:

selecting the second course to be equivalent to the first course by applying a personal factor selected from a group consisting of: age, gender, and physical handicaps.

5. The method of Claim 36 further comprising:

determining positions of the first participant during the first performance.

6. The method of Claim 5 wherein the positions of the first participant are determined using a first positioning device.

7. The method of Claim 6 wherein the first positioning device is selected from a group consisting of: a Global Positioning System unit, a Differential Global Positioning System unit, cell phone positioning technology that uses triangulation, cell phone positioning technology that uses time-of-arrival, cell phone positioning technology that uses direction-of arrival, and beacons.

8. The method of Claim 5 wherein the positions of the first participant are transmitted as data wirelessly from a first communications device located with the first participant.

11. The method of Claim 36 further comprising:

determining positions of a second participant during the second performance.

12. The method of Claim 11 wherein the positions of the second participant are determined using a second positioning device.

13. The method of Claim 12 wherein the second positioning device is selected from a group consisting of: a Global Positioning System unit, a Differential Global Positioning System unit, cell phone positioning technology that uses triangulation, cell phone positioning technology that uses time-of-arrival, cell phone positioning technology that uses direction-of arrival, and beacons.

14. The method of Claim 11 wherein the positions of the second participant are transmitted as data wirelessly from a second communications device located with the second participant.

17. The method of Claim 36 wherein the second performance is by the first participant, but occurred at a time previous to a time of the first performance.

18. The method of Claim 36 wherein the indication is provided to the first participant during the event.

19. The method of Claim 36 wherein the indication is provided to the first participant during the event via a wireless communications device.

23. The system of Claim 37 wherein the participant's performance is monitored by a positioning unit that determines positions of the participant in the first geographic area while the participant is moving along the first course in the first geographic area.

36. A method for facilitating a first performance by a participant in an event that includes movement along a first course located in a first geographic area, the method comprising:

using a geographic database that contains data that represents geographic features in the first geographic area to compare the geographic features of the first course to the

geographic features of a second course located in a second geographic area different from the first geographic area;

comparing the first performance to a second performance, wherein the second performance is along the second course; and

providing an indication of the comparing of the first and second performances to the participant.

37. A system for facilitating performances in events comprising:

a geographic database that contains data that represents geographic features in a first geographic area and a second geographic area different from the first geographic area;

a competition comparison and equivalency program executed on a computer system that uses the geographic database to compare the geographic features of a first course located in the first geographic area to the geographic features of a second course located in the second geographic area and indicates to a participant results of a comparison of a first performance by the participant in an event that includes movement along the first course to a second performance along the second course.

38. A computer-readable medium having executable instructions stored thereon for performing a method for facilitating performances in events, the method comprising:

using a geographic database that contains data that represents geographic features in the first geographic area to compare the geographic features of the first course with the geographic features of a second course located in a second geographic area different from the first geographic area;

comparing the first performance to a second performance, wherein the second performance is along the second course; and

providing an indication of the comparing of the first and second performances to the participant.

IX. Evidence Appendix

None

X. Related Proceedings Appendix

None